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acter, pursued as pure technical speculations, have often played a much greater part in legal development than national genius, or legislation or local custom. There have been fashions in legal thinking, as in other things, and the influence of conspicuous bodies of legal doctrine must be reckoned with.

Turning to the work of the translator, so far as comparison with the French version allows one to judge, it appears well done. The text is clear and readable. The influence of the French version appears in some curious Gallicisms, *e. g.*, "the man" for mankind (p. 187), "de Warnkoenig," "de Walter," "de Bluhme" (pp. 17, 18), "antique society" (p. 70) and a tendency to use a *c* in German titles where the author used a *k*. One may feel also that "subjective law" (p. 167) is not felicitous, that the ambiguity of *pravo* (*droit*, *Recht*, *jus*) might have been dealt with more delicately and judiciously, and that the use of "duty" and "obligation" (pp. 174, 175, 188, 196), might be at times more discriminating. In this last respect, the French version seems subject to criticism. How far the original is reflected faithfully, I am unable to say.

The proof-reader has not done his part of the work with equal fidelity. In five references to Bierling's well-known work (pp. 54, 167, 169, 192, 208) there are five errors. Puntschart is spelled "Punchart" (p. 197). The names of Jhering (p. 18), Voigt (p. 123) and Gumpłowicz (p. 99, 336) are also misspelled. Neglect of Greek accents (pp. 23, 116) and of German *umlauts* (*e. g.* p. 55) and German nouns without their accustomed initial capitals, create an impression of carelessness.

In other respects, printer and publisher have made an attractive book.

R. P.

THE FEDERAL CORPORATION TAX LAW OF 1909. By ARTHUR W. MACHEN, JR. Boston: LITTLE, BROWN & Co. 1910. pp. xxv, 289.

This book is primarily intended as a practical handbook to aid corporations in preparing returns and complying with the other requirements of the Corporation Tax Law. The author modestly states its aim as that of "furnishing practical assistance in what may not inappropriately be described as an emergency." The difficulty of writing a text book on a new and unprecedented statute is obvious.

The origin of the law is first briefly described, and it is shown how the desire of Congress to supplement the revenue derivable from the Tariff Law and the general popular agitation in favor of an Income Tax resulted in this compromise between those who wished to pass a general income tax and those who were opposed to it.

The uncertainty as to the precise nature of the tax is shown by the author's inability to discover exactly upon what the tax is to be imposed. That this uncertainty is not the author's alone, but is one shared by members of the bar in general is well known, and the incidence of the tax must remain in doubt until the Supreme Court has spoken. Economically the tax would seem to be an income tax but the legal classification of taxes is historical rather than economic. While this is generally true, the courts sometimes seem to lose sight of it and economic definitions are treated as weighty. Thus the term "direct tax" was held in the *Income Tax* cases to be an economic classification by the Supreme Court and the historic *non economic* classification accorded

to it since the *Hylton* case, (almost contemporaneous with the Constitution) was totally disregarded by the majority of the Court. Yet a few years later, in the *Knowlton* case, a tax on successions was held not to be a direct tax but an excise, mainly because it had been so denominated in the historic development of English tax statutes, although almost the only tax which the economists now agree to be a direct tax.

The author doubts whether it can be a business excise, since the income from all sources is made subject to the tax, and it has been repeatedly held that a corporation may have income derived from sources other than its business (pp. 43, 57 *et seq.*). He appears to conclude perhaps somewhat lightly that the tax is not one on franchises because also levied on joint stock associations. The answer to this would seem to be two-fold: the statute may well be construed to apply to those associations only which are in fact corporations, but even if the tax were upon corporations and joint stock associations in the nature of partnerships, it would nevertheless fall upon the right to be a corporation, and hence be a burden upon a state function or instrumentality. Finally the author concludes that if not an income tax it is almost impossible to classify it in any other way.

Perhaps by the time this review is printed, these legitimate doubts as to the nature and constitutionality of the Corporation Income Tax may have been resolved by the Supreme Court and the question set at rest.

Our author agrees that the attempt to classify it as an *excise* in the statute itself, is a mere *brutum fulmen*, since Congress cannot change "la nature des choses" by enactment however solemn, this higher power residing in the judiciary alone. In discussing its constitutionality, the author is guarded, but seems to incline to the view that as a tax on business income it is good, but as a tax on income from other sources it may fall within the ruling of the *Income Tax* cases. Even so, however, he inclines to the belief that it would be unconstitutional only as to that income derived direct from real and personal property.

The greater portion of the book is devoted to ascertaining what companies are subject to the tax, the method of preparing the return and the method of levying the assessment. Regarding these matters there can be no direct authority and the author seems to have construed the statute in common-sense fashion, throwing occasional side-lights from cases which construed analogous matter. This portion of the book will, if the tax be declared valid, be very useful to corporations, although probably in a short time numerous adjudications on the many obscure points in the statute will necessitate a new edition. That the law is drastic and made little provision for such indispensable requisites of "due process" as notice and hearing, is noted by our author and will be of good cheer to those who fear that lawyers in the future may find insufficient occupation.

F. R. C.

A TREATISE ON THE FEDERAL EMPLOYER'S LIABILITY AND SAFETY APPLIANCE ACTS. By W. W. THORNTON, Cincinnati, Ohio: The W. H. ANDERSON COMPANY. 1909. pp. xlvii, 410.

The title of this book is a trifle misleading, as it is less a treatise than an annotation of the federal statutes which it considers. The author is unusually reticent in the expression of his own views and in the discussion of general underlying principles. The opportunities